IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1522 of 2002

Reserved on : 19th April, 2007
Date of Decision: 7th May, 2007.

Nathu Ram	Petitioner
Versus	
Union of India and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]?

For the petitioner: Mr.Ajay Sharma, Advocate.

For the respondents: Mr.Anup Rattan, Central Government Counsel.

Sanjay Karol, J.

Petitioner Nathu Ram while working as Extra Departmental Branch Post Master (for short, EDBPM), Village and Post Office Kohlari, District Chamba, was charge-sheeted on the following grounds:-

"(i) That while working as EDBPM at Kohlari EDBO from 1.7.92 to 3.9.92, petitioner detained excess cash beyond the prescribed limits without corresponding liabilities.

(ii) That while working as EDBPM at Kohlari EDBO, petitioner delayed payment of the Money Orders from 6.8.92 to 25.8.92 inspite of the fact that adequate amount was available to make payments.

Whether the reporters of Local Papers are allowed to see the Judgment?

(iii) That while working as EDBPM at the aforesaid EDBO, petitioner received Rs.100/- each from the holders of RD Account Nos. 1360047 and 1360057 dated 25.10.91 and 23.1.92, respectively. He failed to account for these two deposits into Government account on the dates of receipt and also made cuttings on the pay-in slips.

An inquiry under Rule 8 of P & T –ED Agents (Conduct & Service) Rules, 1964 was initiated. During the course of inquiry, petitioner was supplied with the Article of Charges and entire material relied upon against him. Vide letter dated 2nd September, 1993 petitioner was asked to appoint a Defence Assistant other than a lawyer or an advocate. Petitioner appointed Shri Milkhi Ram, Male Overseer attached to his office as Defence Assistant to defend his case, which is clear from letter and application dated 20th December, 1993 (Annexure R-8 and Annexure R-13). During the course of enquiry petitioner admitted the charges unconditionally, but, however, clarified that they were not due to any mala fide intention but were due to his carelessness. He begged pardon and assured not to repeat irregularities in future. Petitioner appeared before the Inquiry Officer from time to time as is clear from Annexures R10-A and R-11-A. After a detailed inquiry, the Inquiry Officer held the charges

to be fully proved in his report. The Disciplinary Authority accepted the report and imposed penalty of removal from service vide orders dated 15th February, 1994. Petitioner preferred an appeal, which was also rejected vide orders dated 22nd July, 1994.

Petitioner preferred Original Application before the Central Administrative Tribunal, Chandigarh Bench, which was disposed of on 29th October, 1996 wherein it was directed that in the event of the petitioner filing a review petition the same would be considered and disposed of by passing a reasoned order. The review petition filed by the petitioner was considered and the same was rejected vide orders dated 19th May, 1997. The said order was again assailed by the petitioner before Central Administrative Tribunal, Chandigarh Bench, by way of Original Application being OA No.1052/HP/97, which was disposed of vide orders dated 16th October, 2000.

All the authorities below have considered the material on record and have approved the action of the Disciplinary Authority in accepting the inquiry report and imposing penalty of removal from service upon the petitioner.

Learned counsel for the petitioner argued (i) that no adequate opportunity was afforded to the petitioner inasmuch as he was not allowed to engage an advocate to represent him before the enquiry officer

in the departmental inquiry, (ii) that the penalty imposed upon the petitioner is harsh, unjust and is disproportionate to the gravity of misconduct/charges.

Having heard learned counsel for the parties, I must record, in fairness to the learned counsel for the petitioner, that he did not challenge the inquiry report on merits except to the limited extent referred to hereinabove.

The submission of counsel for the petitioner that petitioner was not allowed to engage the services of an advocate and, therefore, the entire inquiry is vitiated is not acceptable for the following reasons:-

(i) The Rule 14(8)(a) of CCS CCA Rules bars appointment of legal practitioner (advocate) to represent the delinquent official before the inquiry officer unless permitted by the disciplinary authority. The said Rule provides for an assistance of other Government servant posted in any office. There is no challenge to the Rules. Be that as it may, vide letter dated 4.11.1993 (Annexure R-12) petitioner was duly informed that his request for appointment of an advocate is not acceptable in terms of the Rules and as such, he was asked to appoint a government servant to defend himself (ii) vide Annexure R-13 application dated 20th December, 1993 petitioner himself sought appointment of Shri Milkhi Ram, Overseer as Defence Assistant, who vide Annexure

R-15 dated 20th December, 1993 was directed to make himself available to defend the delinquent official and assist the inquiry officer in the disciplinary proceedings and (iii) petitioner himself has unconditionally admitted to all the charges.

On the issue of penalty being disproportionate to the misconduct/charges, the authorities below held that the same is in consonance with the proved misconduct/charges. Perusal of all the charges would show that misconduct of financial impropriety is not an isolated incident for a short duration and for a compelling justifiable reason. The charge is of financial impropriety. It is a series of acts spread over a period one year i.e. from 25.10.1991 upto 31.9.1992. The first charge pertains to the period 25.10.1991 to 23.1.1992, second pertains to 1.7.92 to 3.9.92 and third pertains to 6.8.92 to 25.8.92. This would only show that petitioner as a custodian of public money had been misutilising the same over a considerable period of time. He has admitted to the charge of delay in making payment of money orders, which are sent by the people to their poor relatives and dependants to manage their daily kitchens.

In Om Kumar and others vs. Union of India, reported in AIR 2000 SC 3689, the Court has held as under:-

"67. But where, an administrative action is challenged as 'arbitrary under Art. 14 on the basis of Royappa (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is 'rational' or 'reasonable' and the test then is the Wednesbury test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. ….

68. Thus, when administrative action is attacked as discriminatory under Art.14, the principle of primary review is for the Courts by applying proportionality. However, where administrative action is questioned as 'arbitrary' under Art. 14, the principle of secondary review based on Wednesbury principles applies. ….

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as 'arbitrary' under Art.14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing

Court because no issue of fundamental freedoms nor of discrimination under Art. 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the Administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and (in) such extreme or rare cases can the Court substitute its own view as to the quantum of punishment."

For the foregoing reasons, the writ petition is dismissed with costs.

May 7, 2007
(C)

(Sanjay Karol),
Judge